

### **Remarks**

Reconsideration of the application is respectfully requested in view of the foregoing amendments and following remarks. Please cancel claim 1 and add new claims 20 and 21. Upon entry of this amendment, claims 1, 3-7 and 13-21 remain in the application.

### ***Final Rejection***

Applicants respectfully request that the Examiner withdraw the final rejection. In order for the rejection to be proper, each and every element of every claim must be shown. Applicants respectfully assert that the Examiner has failed to show at least the following features, such as:

Claim 7: “wherein as space is needed, said copied video programs are overwritten in the following priority, first overwrite viewed copied video programs, then overwrite non-viewed copied video programs.”

Claim 13: “upon returning to an interactive entertainment channel, the system automatically cycles through plural selections in the determined affinity grouping.”

Claim 17: “automatically playing the copied favorite video program when the favorites channel is selected.”

For at least this reason, and for other reasons discussed below, Applicants respectfully request that the Examiner withdraw the final rejection. Such action is respectfully requested.

### ***Formal Request For Interview***

Upon reviewing this response, if any issues remain, the Examiner is formally requested to contact the undersigned prior to issuance of the next Office Action in order to arrange a telephonic interview. It is believed that a brief discussion of the merits of the present application may expedite prosecution. Applicants submit the foregoing formal Response so that the Examiner may fully evaluate Applicants’ position, thereby enabling the interview to be more focused. This request is being submitted under MPEP § 713.01, which indicates that an interview may be arranged in advance by a written request.

### ***Patentability Over Herz, Yoshinobu, Alexander, Lazarus, and Daniels***

The Office asserts a novelty rejection of claim 13 over Herz, U.S. Patent No. 5,758,257 (“Herz”). The Office asserts an obvious rejection of claims 6, 1, 4, and 5 over Herz in view of

Yoshinobu, U.S. Patent No. 5,734,444 (“Yoshinobu”) and further in view of Alexander, U.S. Patent No. 6,177,931 (“Alexander”). The Office asserts a rejection of claim 3 as obvious over Herz in view of Yoshinobu, Alexander and Hendricks, U.S. Patent No. 5,600,364 (“Hendricks”). The Office asserts a rejection of claims 7, and 14-18 as obvious over Herz in view of Yoshinobu, Alexander, and Lazarus, U.S. Patent No. 5,652,613 (“Lazarus”). The Office asserts a rejection of claim 19 as obvious over Herz in view of Yoshinobu, Alexander, Lazarus, and Daniels, U.S. Patent Publication No. 2002/0032907 (“Daniels”). Applicants respectfully traverse.

***Claim 6***

Applicants respectfully assert that the proposed Herz-Yoshinobu combination fails to teach or suggest “generating profiles for plural users, said profiles comprising user viewing habits and at least one other user habit comprising a game habit, a chat habit, or a jukebox habit.” See e.g., Application, at page 16, lines 7-15 and lines 20-22.

The Office Action indicates at page 8, paragraph 3, and at page 5 paragraph 2, that the following language in Herz may describe the above amended claim language:

“[T]he customer profiles represent the customer’s preferences for the program characteristics and preferably differ in accordance with the time of day to account for different moods of the customer and different customers within each household.” Herz, col. 25, lines 7-13.

...

“Another way to make adjustments to the customer’s combined ratings is through the clustering of customers. Customer’s are asked to give ratings for various programs. If a group of customer’s come up with very similar ratings for most of the programs in a category, it is assumed that the actual acceptance ranges for these customers for each characteristic relevant to the category forms a narrow distribution, i.e., their values are close to each other.” Herz, col. 15, lines 22-29.

Applicants respectfully assert that this language in Herz fails to teach or suggest “generating profiles for plural users, said profiles comprising user viewing habits and at least one other user habit comprising a game habit, a chat habit, or a jukebox habit.”

For at least this reason, amended claim 6 is allowable. Such action is respectfully requested.

### ***Claim 3***

With respect to claim 3, Applicants respectfully submit that Hendricks at col. 38, lines 56-61 and col. 39, lines 3-6, fails to teach or suggest “copying to the store plural programs ... in accordance with the ranking.” Hendricks as indicated, is not concerned with copying ... in accordance with the ranking.

Further, amended claims 3 depend from claim 6. Since claim 3 depends from claim 6, it should be allowed for at least the reasons stated for claim 6. In view of the foregoing discussion of claim 6, the merits of the separate patentability of dependent claims 3 is not further belabored at this time. For at least these reasons, claim 3 should be allowable. Such action is respectfully requested.

### ***Claim 7***

Applicants respectfully assert that the Office has failed to carry the burden of establishing obviousness of claim 7, because the asserted Herz-Yoshinobu-Alexander-Lazarus combination fails to teach or suggest “wherein as space is needed, said copied video programs are overwritten in the following priority, first overwrite viewed copied video programs, then overwrite non-viewed copied video programs.” For at least this reason, claim 7 is allowable.

For example, the Office directs Applicants to the following language of Lazarus:

The triage routine 140 of the present invention performs an information prioritization function, quantifying the current value of the information associated with each program record so that the least valuable information can be tagged and deleted on a real-time basis. Col. 5, lines 22-26 (see also col. 4, lines 21-19 and col. 2, lines 56-64).

Applicants respectfully submit that the above passages in Lazarus fail to teach or suggest the recited arrangement. For example, Lazarus is describing how to manage scheduling information for an electronic programming guide (EPG). The “program record” described in Lazarus is “obsolete schedule information” in the EPG, not copied video programs. For example, there is no recorded favorite program that is overwritten before viewed in the proposed combination.

Additionally, the proposed combination fails to teach or suggest that the overwritten “non-viewed copied video programs” comprises a user “favorite program” that was “automatically recorded if it is not viewed by the user when broadcast.” This is simply not shown in the proposed combination.

Finally, even if motivation to combine had been shown, the combination of the references would not provide the claimed arrangement. For example, Lazarus describes how to manage memory used for storing scheduling information for an electronic programming guide (EPG). The “program record” described in Lazarus is “obsolete schedule information” in the EPG, and thus Lazarus copies over portions of the EPG. Thus combining Lazarus with the recited combination, at most provides EPG memory management, which teaches away from the recited arrangement. Thus, at most, one of ordinary skill in the art would be motivated to manage EPG memory in light of Lazarus. And certainly the recited combination would not teach or suggest “wherein as space is needed, said copied video programs are overwritten in the following priority, first overwrite viewed copied video programs, then overwrite non-viewed copied video programs.”

In order to establish obviousness, the recited combination must teach or suggest each and every element of the recited claim language. In any event, the combination fails to teach or suggest “copied video programs are overwritten in the following priority, first overwrite viewed copied video programs, then overwrite non-viewed copied video programs.” As such, Applicants respectfully assert that the final action is improper, and request the allowance of claim 7.

For at least this reason, claim 7 is allowable. Such action is respectfully requested.

### ***Claim 13***

Applicants respectfully assert that Herz fails to teach or suggest “upon returning to an interactive entertainment channel, the system automatically cycles through plural selections in the determined affinity grouping.”

The Office Action asserts that the following language in Herz describes the above indicated claim language:

Such a technique may also be used to monitor changing preferences and even changes in demographics for the customers connected to each node by periodically updating the clustered customer profiles for that node to reflect the changes in the customer profiles of those customers connected to a particular node. Herz, col. 48, lines 42-48.

Applicants respectfully assert that the provided language in Herz, at most, would motivate a skilled artisan to provide for “periodically updating customer profiles.” As described in Herz, “customer profiles” describe customer characteristics (col. 6, line 42-22) and “content profiles” describes programming characteristics (col. 6, lines 46-48); whereas, “programming selections” are the programming content provided on channels (col. 23, line 5). Thus, Applicants respectfully assert that the above relied upon language describes updating customer characteristics, and fails to teach or suggest the recited arrangement.

Applicants respectfully assert this language in Herz fails to teach or suggest “upon returning to an interactive entertainment channel, the system automatically cycles through plural selections in the determined affinity grouping.”

For at least this reason, the final rejection is improper, and claim 13 is allowable. Such action is respectfully requested.

#### ***Claim 4, 5***

With respect to claim 5, Applicants respectfully submit that Alexander at col. 30, lines 53-58, fails to teach or suggest “listing the copied video program in an electronic program guide associated with the system, together with a viewing channel on which the copied video can be viewed.” Further, amended claims 4 and 5 depend from claim 13. Since they depend from claim 13, they should be allowed for at least the reasons stated for claim 13. In view of the foregoing discussion of claim 13, the merits of the separate patentability of dependent claims 4-5 are not further belabored at this time. Claims 4 and 5 should be allowable. Such action is respectfully requested.

#### ***Claim 14***

Applicants respectfully assert that the Office has failed to carry the burden of establishing obviousness of claim 14, because the asserted Herz-Yoshinobu-Alexander-Lazarus combination fails to teach or suggest “instructions for overwriting copied video programs in a following

priority, first overwrite viewed copied video programs, then overwrite non-viewed copied video programs.” For at least this reason, claim 14 is allowable.

For example, the Office directs Applicants to the following language of Lazarus:

The triage routine 140 of the present invention performs an information prioritization function, quantifying the current value of the information associated with each program record so that the least valuable information can be tagged and deleted on a real-time basis. Col. 5, lines 22-26 (see also col. 4, lines 21-19 and col. 2, lines 56-64).

The Office asserts that the recited language discloses claim 14. See Office Action, mailed April 20, 2005, at page 13. Applicants respectfully submit that the above passages in Lazarus fail to teach or suggest the recited arrangement. For example, Lazarus is describing how to manage scheduling information for an electronic programming guide (EPG). The “program record” described in Lazarus is “obsolete schedule information” in the EPG, not copied video programs. For example, there is no recorded favorite program that is overwritten before viewed in the proposed combination. Lazarus, col. 2, line 54.

Additionally, the proposed combination fails to teach or suggest that the overwritten “non-viewed copied video programs” comprises a user “favorite program” that was “automatically recorded if it is not viewed by the user when broadcast.” There is simply not shown in the proposed combination.

Finally, even if motivation to combine had been shown, the combination of the references would not provide the claimed arrangement. For example, Lazarus describes how to manage memory used for storing scheduling information for an electronic programming guide (EPG). The “program record” described in Lazarus is “obsolete schedule information” in the EPG, and thus Lazarus copies over portions of the EPG. Thus combining Lazarus with the recited combination, at most provides EPG memory management, which teaches away from the recited arrangement. Thus, at most, one of ordinary skill in the art would be motivated to manage EPG memory in light of Lazarus. And certainly the recited combination would not teach or suggest “wherein as space is needed, said copied video programs are overwritten in the following priority, first overwrite viewed copied video programs, then overwrite non-viewed copied video programs.”

For at least this reason, claim 14 is allowable. Such action is respectfully requested.

***Claim 17***

The Office asserts that that the following language describes claim 17:

“Then the user selects desired one of the recorded contents from the displayed data in FIG. 10, by actuating a up/down cursor key of the remote commander and reproduces the desired program to enjoy same.” Yoshinobu, col. 14, line 54-57.

Applicants respectfully assert that the provided combination fails to teach or suggest “automatically playing the copied favorite video program when the favorites channel is selected”, especially since neither a favorites channel with a copied favorite video program nor automatic playback upon returning to such a favorites channel has been shown. For at least this reason, the rejection of claim 17 is improper, and should be allowed. Such action is respectfully requested.

***Claims 15-19***

Additionally, claims 15-19 depend from claim 14. Since they depend from claim 14, they should be allowed for at least the reasons stated for claim 14. In view of the foregoing discussion of claim 14, the merits of the separate patentability of dependent claims 15-19 are not belabored at this time. Claims 15-19 should be allowable. Such action is respectfully requested.

***New Claim 20 and 21***

There is support for new claims 20 and 21 in the specification at page 16, line 14, and at page 16, lines 3-22. New claims 20-21 should be allowable. Such action is respectfully requested.

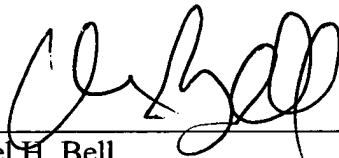
**Conclusion**

The claims in their present form should now be allowable. Such action is respectfully requested. The Office is respectfully reminded of the above "Formal Interview Request." The request is being submitted under MPEP § 713.01, which indicates that an interview may be arranged in advance by a written request.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By

  
\_\_\_\_\_  
Daniel H. Bell  
Registration No. 56,141

One World Trade Center, Suite 1600  
121 S.W. Salmon Street  
Portland, Oregon 97204  
Telephone: (503) 595-5300  
Facsimile: (503) 228-9446